

**CGST/Uttar Pradesh GST : Where Competent Authority had seized assessee's new loader/tipper with temporary registration number coming from Jamshedpur under section 129(1) of U.P.GST Act on ground that assessee had not furnished E-way bill immediately at time of detention and also imposed penalty under section 129(3), said authority was directed to release vehicle without demanding any security**

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**[2018] 94 taxmann.com 228 (Allahabad)**

**HIGH COURT OF ALLAHABAD**

**Puneet Automobiles Ltd.**

**v.**

**State of U.P.\***

**PANKAJ MITHAL AND SARAL SRIVASTAVA, JJ.**

**WRIT TAX NO. 99 OF 2018**

**JANUARY 31, 2018**

**Section 68, read with section 129, of the Central Goods and Services Tax Act, 2017, section 68 and , section 129, of the Uttar Pradesh Goods and Services Tax Act, 2017 - Search, seizure, etc. - Goods in movement, inspection of (NR) - Competent Authority had seized assessee's new loader/tipper with temporary registration number coming from Jamshedpur under section 129(1) of Uttar Pradesh GST Act on ground that assessee had not furnished E-way bill immediately at time of detention - He also imposed penalty under section 129(3) - Whether since loader/tipper was duly supported by other documents including temporary registration number ensuring no possibility of evasion of tax, Competent Authority was to be directed to release loader/tipper without demanding any security from assessee - Held, yes [Para 4] [Partly in favour of assessee]**

## **FACTS**

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- The Competent Authority had seized the assessee's new loader/tipper with temporary registration number coming from Jamshedpur under section 129(1) on the ground that the assessee had not furnished the E-way bill immediately at time of detention. He also imposed the penalty under section 129(3).
- On writ petition, the assessee contended that the requirement of E-way bill had been made applicable under the Central GST with effect from 1-2-2018 and was not in place on the date of seizure though the State of U.P. alone had made a provision for the E-way bill earlier but that was not applicable to the State of Jharkhand from where the said loader/tipper had started journey.

## **HELD**

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- Since the loader/tipper was duly supported by other documents including temporary registration number ensuring no possibility of evasion of tax, the Competent Authority was to be directed to release the loader/tipper without demanding any

security from the assessee forthwith leaving the order of penalty to be challenged by the assessee, if necessary by means of an appeal under section 107 of the U.P. GST if so advised. [Para 4]

- The Office was to be directed to list the writ petition for admission/final disposal.

**Shubham Agrawal and Rituraj Singh** *for the Petitioner.* **Gyan Prakash, C.S.C.** *for the Respondent.*

## **ORDER**

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1. Heard Sri Shubham Agrawal, learned counsel for the petitioner and Sri C.B. Tripathi special counsel has appeared for the State of U.P. and Sri Anant Kumar Tiwari learned counsel for Union of India.
2. The new loader/tipper with temporary registration no.- JH05AL3889 coming from Jamshedpur (Tata Motors Limited) was detained and seized under Section 129(1) of U.P. GST on 02-01-2018 thereafter an order of penalty has been passed on 07-01-2018 under Section 129(3) of the U.P. GST Act. These two order have been impugned by means of this writ petition. The submission of learned counsel for the petitioner is that the seizure has been done on account of non furnishing of the E-Way Bill immediately at the time of detention.
3. The further submission is that the requirement of E-Way Bill has been made applicable under the Central GST with effect from 1st February, 2018 and was not in place on the date of seizure though the State of U.P. alone has made a provision for the E-Way Bill earlier but that was not applicable to the State of Jharkhand from where the said loader/tipper had started journey.
4. In view of the facts and circumstances, notwithstanding the remedy of appeal against the order of the seizure, the loader/tipper were duly supported by other documents including temporary registration number ensuring no possibility of evasion of tax, as provided in other matters of the similar nature, we direct the respondent to release the loader/tipper without demanding any security from the petitioner forthwith leaving the order of penalty to be challenged by the petitioner if necessary by means of an appeal under Section 107 of the U.P. GST if so advised.
5. Sri C.B. Tripathi, may file reply to this writ petition within a period of three weeks. Two weeks thereafter is allowed to the petitioner for filing rejoinder affidavit.
6. List for admission/final disposal on the expiry of the above period.

s.k. jain

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\*Partly in favour of assessee.